

Jan 26 24
ONE HUNDRED POUNDS DAMAGES. C#

GEORGE ROSE, Esq.

One of the Secretaries of the Treasury,

AGAINST

WILLIAM WILLIAMS,

THE PRINTER,

AND

RICHARD TATTERSALL,

HORSE-DEALER, AND PROPRIETOR OF THE MORNING-
POST,

FOR A LIBEL,

*In which he is charged with having used the Terrors of the Excise
Laws as an Instrument to subvert the Freedom of Election.*

TRIED BEFORE

THE RIGHT HONOURABLE

LLOYD LORD KENYON,

AND A SPECIAL JURY,

AT

WESTMINSTER,

On Monday, July 9, 1792.

TAKEN VERBATIM IN SHORT-HAND.

LONDON:

PRINTED FOR J. OWEN, NO. 168, PICCADILLY; AND SYMONDS,
PATERNOSTER ROW.

1792.

Rec. Jan. 19, 1906.

GEORGE ROSE, Esq.

AGAINST

WILLIAM WILLIAMS

AND

RICHARD TATTERSALL,

FOR A LIBEL.

C O U N S E L.

For the Plaintiff.

MR. ATTOR. GENERAL,
MR. BEARCROFT,
and
MR. WOOD.

For the Defendant.

MR. ERSKINE.

MR. WOOD opened the pleadings. The Declaration stated, That the Defendant, on the 15th of March last, published a Libel on the Plaintiff, in the Public Print called THE MORNING-POST and DAILY ADVERTISER, according to the tenor and effect following :—" The worthy Secretary
" of the Treasury was clearly convicted in the House

B

" of

“ of Commons, on Tuesday, of having made the
 “ terrors of Excise an instrument for subverting the
 “ Freedom of Election. Would he have transmitted
 “ Smith’s petition for the remission of a fine to the
 “ Board of Excise, if Smith had been an indifferent
 “ person to him? Would he afterwards have written
 “ to Mr. Cholmondeley, one of the Commissioners,
 “ to suspend levying the fine, if he had not inter-
 “ rested himself in Smith’s behalf? And would he
 “ have written a note to Smith appointing, at his
 “ own house, a meeting between him and the Soli-
 “ citor of the Excise, if he had not had some *par-*
 “ *ticular motives* for screening his *trusty Election*
 “ *Agent.*”

“ Administration should have some regard for *ap-*
 “ *pearances*, when they desire their friends to vote
 “ with them. The last majority on the Russian bu-
 “ siness, and the still greater majority on Mr. Rose’s
 “ conduct may, as Mr. Fox some time ago ob-
 “ served, teach the Public to look up to the Mi-
 “ nority as the most respectable part of the House.”

“ If Mr. Rose has places under Government
 “ worth more than TEN THOUSAND POUNDS *per*
 “ *Annum*, it must be acknowledged that he richly
 “ deserves them, for no man could do the dirty
 “ work of Administration with more chearfulness,
 “ and

“ and yet boast in the British Parliament of his
 “ *purity*. His late exposure in the House of Com-
 “ mons will, no doubt, entitle him to another fine-
 “ cure of TWO or THREE THOUSAND POUNDS *per*
 “ *Annum*, as a boon for his sufferings.”

To this Declaration the Defendant pleaded the
 general issue, NOT GUILTY; and thereupon issue was
 joined.

MR. ATTORNEY GENERAL'S
OPENING SPEECH TO THE JURY.

Gentlemen of the Jury,

IN this case, Gentlemen, I am extremely sensible I come with some disadvantage before those who may have heard what passed on the last occasion *. I have no doubt, Gentlemen, but your feelings were on that occasion so much affected, at least if they were affected in the manner mine were, that the libellous publication I have now to lay before you will appear cold and uninteresting. But, Gentlemen, you will suffer me to say, on my own behalf, as well as on behalf of all those who have a public duty cast upon them, particularly all those who are acquainted with the nice operations of the Excise Laws, you will permit me on their behalf to solicit your protection against calumnious attacks, such as that which is contained in this libel. It is not very often my province to address you in cases like the present, which I am about to state to you.

Smith, a publican, in Westminster, made application to me, and requested that a fine, which had been

* The cause of Lady Elizabeth Lambert against Mr. Tatterfall, for a libel.

imposed

imposed on him in consequence of a conviction, might be remitted. Feeling my own name implicated in this matter, I have for myself strong reason to solicit the favour of your attention. I would premise that public men, in public stations, are all of them exposed to a great deal of calumny. Up to a certain extent, the times require we should put up with it. But when it comes to a direct charge of corruption, when men in a public situation are charged with perverting laws which must be executed with the greatest circumspection, with infinite moderation, and a steady temper, when these laws are supposed to be perverted for any reason, then the charge strikes home to every public man's heart. But farther, Gentlemen, when these laws are supposed by any individual to be perverted for the most odious of all purposes, namely, for the purposes of garbling *Representation in Parliament*, it is a matter of serious concern. Such is the libel in the present case. And if you do not protect men in a public station, the consequence may be, though I hope in God it never will, but the consequence may be, that you will render them callous to reputation, in as much as it will become matter of indifference whether it be true or false, if this is always to be the case whatever be their conduct.

Much of what has fallen from my Lord (in the cases of the King v. Bell, and also of Lady Elizabeth Lambert v. Tatterfall, for libels) applies to every case,

case, and particularly to the case of public men: If they do not execute their trust, they deserve the severest punishment which the law of their country can draw down upon them. If that be so, will you suffer libellous newspapers to disseminate in twenty-four hours in every corner of this kingdom that slander with which the press daily and hourly teems? The Board of Excise, in the case of convictions, always consider any thing that may have arisen since the trial, and sometimes such facts come out as may in a considerable degree mitigate the penalty, to which the law had subjected the individual. In the particular instance of Smith, I myself conducted the cause, and I was the person to whom Smith directed an application to be made, and without my interposition they would hardly have proceeded to have done any act. This being the nature of the libel, namely, that the Secretary of the Treasury is asserted to have been convicted by the House of Commons of Great Britain of perverting the revenue law for the purpose of jobbing at an election; I ask you, if that was true, where was the difficulty of proving it? The witnesses all live near this place, and might easily have been called. If the Defendant had chosen, he had nothing to do but to say, I will prove it to be true, and you have sustained no injury. The Defendant might have proved the truth of it by three witnesses, all of whom are forthcoming, none of whom live at a great distance, and one of them not forty yards from
this

this place. If when the Defendant and his friends have it in their power to prove that charge before you, and they shrink from it, I hope you will not let it go out into the world that these are calumnies which only demand trifling damages. If you do, it will be attended with the most serious and dangerous consequences.

EVIDENCE

EVIDENCE FOR PLAINTIFF.

JOHN BOLT *examined by* MR. BEARCROFT.

Q. Did you purchase that paper? (The witness was holding a newspaper in his hand.)

A. Yes, Sir.

Q. When?

A. The 15th of March last.

Q. At whose shop or office?

A. At Mr. Williams's.

Q. (By MR. ERSKINE.) Don't you know Williams is in Newgate?

A. I do not know he is in Newgate.

MR. BERRY *examined.*

Q. What is that, Sir, which you hold in your hand?

A. It is a bond. This bond was from William Williams, printer of the newspaper called the Morning Post, and dated April 20th, 1791. This bond contained a security to Government that the taxes on that newspaper would be duly paid.

MR.

MR. REMUS *examined.*

Q. Can you tell me if Mr. Rose is one of the Secretaries to the Treasury?

A. (MR. ERSKINE.) He is, and he will continue in it as long as he can.

Q. On what day and year did the libel appear?

A. On March 15th, 1792.

The necessary proof on the part of the Plaintiff being finished, the Morning Post of the 15th of March last was produced, and the libel read.

LORD KENYON. Is it admitted that the inuendoes apply to Mr. Rose?

MR. ERSKINE. I do not admit any such thing, my Lord.

D E F E N C E.

MR. ERSKINE'S
SPEECH TO THE JURY ON THE PART
OF THE DEFENDANT.*Gentlemen of the Jury,*

IT is rather hard on poor Mr. Williams, the Defendant, that his cause should come on to be tried, and to be defended by me, just at the moment when the former Jury come to deliver in their verdict. (The Jury who tried the cause of Lady Lambert against Tatterfall, for a libel, had gone out to consider of their verdict, and returned just at the time Mr. Erskine began his speech for the Defendant, and gave their verdict for the Plaintiff, with four thousand pounds damages.) Gentlemen, a verdict for four thousand pounds rather indisposes one's stomach for a joke. I do not mean, however, to arraign the Jury. But independently of that circumstance, I never felt myself in a more jocular humour in my life. Mr. Attorney General justly observed, this was a cold sort of a cause after the sensibility excited by the last. I once heard of a certain person drinking small beer after a bottle of Burgundy. In the last cause (Lady Lambert v. Tatterfall) we had the ROSE

OF

OF BEAUTY, THE ROSE OF LOVE. Here we have, I do not know what sort of a Rose. I know your Lordship is a botanist. Here we have a Rose, which I shall call *ROSA MUNDI*, the Rose of the Treasury.

Gentlemen, I should have thought the last time this Gentleman paid us a visit, about a twelve-month ago, in the character of a Defendant; and when he was forced into this honourable court by Mr. Smith, a Publican in Westminster, for the payment of paltry a demand, I should have thought that would have been sufficient to satisfy any man of moderate ambition, and that he would not have come here a second time, unless he had been brought here by force, as he was on that occasion, when Smith was Plaintiff, and George Rose, Esq. one of the Secretaries to the Treasury, Defendant. At that time, Mr. Smith in the character of a Publican, brought Mr. Rose here in the character of a Sinner. These two gentlemen, Mr. Smith and Mr. Rose, had formerly been friends; but as great men, and great politicians, will sometimes differ about matters of finance, that was unfortunately the case in the present instance. A dispute arose between them about a bill, and Smith, who was a hot fiery fellow, would bear it no longer, and brought an action in this court. Impudent fellow! What! Bring Mr. Rose into court for a bill for meat and drink at the election of Lord Hood, standing a candidate for the city of Westminster, and Mr. Rose, in his Majesty's service, but, as it is hinted by one of my friends,

ABOVE INDIGENCE! What in the name of God, could Mr. Rose have to do with Lord Hood's election? Gentlemen, he had so much to do with it, that he was obliged to pay the whole bill. You will say, how happened this? A gentleman of the name of Frost, was called as a witness, and was examined in that cause. Upon the examination of that witness, this makes its appearance ECCE SIGNUM. (Mr. Erskine here held up in his hand, a printed copy of the trial of Smith against George Rose.)

Gentlemen, here is the record. This book was taken from the notes of a very learned gentleman, who now sits near me*. Here we may see the spirit of the Plaintiff. He ransacks Newgate to find out a beggar for the vindication of his character. (Poor Williams, the Defendant, also is in Newgate for a Libel.) On that occasion, that is to say, on the trial of Smith v. Rose, Frost proved, that in the months of September, and October, following the contested election for Westminster, Mr. Smith came frequently to him, and brought him lists of bad votes which he had discovered at the preceding election. Says Frost, I kept a distinct account of these persons employed by the Treasury, from those whom I employed as agents of Lord Hood. First, when Smith presented his bill to Mr. Rose, on looking at it Mr. Rose, who was made debtor in that bill to Smith, wrote upon it with

* We don't know to whom Mr. Erskine here alluded.

his own hand, MODERATE, AND OUGHT TO BE PAID; Afterwards, when Smith applied to Rose for the payment of it, he said, IMMODERATE, AND OUGHT NOT TO BE PAID. The Jury again repeated, MODERATE, AND OUGHT TO BE PAID, and Mr. Rose has paid it; for if he had not, he would now have been with poor Williams in Newgate. I do not desire to calumniate Mr. Rose, but it may be asked, whether he has conducted himself as a man ought to do. In the trial of Smith and Rose, it also appeared, that Mr. Rose told Frost, that there was something of a prosecution going on with the Excise against Smith, and as a mark of the trust and confidence they had in him, they had interfered, and stept in to save him. Smith, the Publican, had been convicted in the court of Exchequer, and a fine imposed upon him. That fine, I understand, never was carried into effect, till a very few weeks, or days ago.

I now come to tell you what the consequence was. The trial of Smith v. Rose was published, and stuck up in every street in London; and every man who was not bedridden must have seen it. It represented him, as if he had been criminally convicted at the Old Bailey. There was not a man in town who did not see it and read it. It was published, and scattered throughout the whole empire. It was maintained, that Mr. Rose did so interfere, and so screen men from justice. The consequence was, that we see the inquest of the nation thought it was matter for consideration,

sideration, and an Honourable Member of the House of Commons in his place, moved for an inquiry, which was supported by all the eloquence of Mr. Fox, and the united strength of opposition. Mr. Fox never abates his eloquence. His eloquence was only introductory to the proofs which he offered to bring in support of the facts which he stated. That Rose so far interfered in behalf of Smith, that the fine which was imposed on Smith agreeably to his offence, has not been levied, or if it has, it has been within a very short period. I do not believe such a thing has happened since St. Stephen's chapel was built. Never since I had any knowledge and recollection of the proceedings of Parliament, has such a strange event happened. When a motion was made in the House of Commons, for inquiring into the conduct of Mr. Rose, and when it actually came on, it was treated by the ministerial side of the House with the most profound silence and contempt. They were as silent as the grave, and not a word was said. The Honourable Plaintiff, who was entitled to meet this accusation if he had pleased, did not come forward. One would have expected, when such heavy charges were imputed to him, that he would naturally have been desirous of coming forward, and of vindicating his character from those aspersions that had been cast upon him.

The person who writes the libellous paragraphs, says Mr. Rose, was convicted in the House of Commons

mons last Tuesday. He was convicted by the inquest of the nation; and I would sit down, and give up the cause, if he meant to say, that Mr. Rose had been impeached by the Commons. I say he has been convicted, by not answering those questions which were put to him by the House. One has no reason to suppose that Mr. Rose had any thing to apprehend from the injustice of the House of Commons. He could not suppose the House was packed against him. I am persuaded they are not given to injustice of this sort. I believe the House is incapable of doing injustice to Mr. Rose. If that was the case, what had he to fear?

The worthy Secretary of the Treasury was charged with screening Smith the Publican from a fine. This, however, was extremely loosely stated on the record. It ought to have been there stated, that Smith the Publican was convicted under the Excise Laws in the Court of Exchequer; that in consequence of that conviction, he was liable to a fine, and that the Defendant had wickedly and maliciously published of and concerning the Plaintiff, that he had perverted the Excise Laws for Election purposes. It should then have stated, that there had been an enquiry moved in the House of Commons, of and concerning Mr. Rose, which enquiry was negatived; and then it should have said, that he, the Defendant, intending to misrepresent this transaction, wrote this Libel. But how was Mr. Rose described in the Declaration?

The

The worthy Secretary of the Treasury, meaning Mr. Rose, &c. Very modest, indeed, considering there are two Secretaries of the Treasury, and considering the Record does not point the application to the one more than to the other. Mr. Long is a Secretary of the Treasury as well as Mr. Rose, the man with a long nose. WORTHY is an epithet which does not belong to him. My client never meant to impute to him any such thing. The word WORTHY applies likewise to the other Secretary of the Treasury. It ought therefore to have been otherwise here, and you may suppose it is meant ironically.

Gentlemen, you will, as the last jury did, you will take the Libel out of Court. The foundation of the paragraph is so notoriously what had passed in the House of Commons relative to the conduct of George Rose and Smith, &c. respecting the Westminster Election, that all London rung with it.

Gentlemen, the safety and honour of the Public are very little consulted in these proceedings. We hear a great deal about persons being discontented with the Constitution of this country. There are no such persons who are discontented with the Constitution of their country. All men who love their country, and who know the history of it, must know, that the wisdom of ages, and very many ages, never constructed such a Constitution as that of England. This discontent therefore of certain persons only extends to the administration of the Government, and not to the Government

Government itself. This is the case universally with all the subjects of Great Britain. They love their King and country, and admire and revere the Constitution.

Mr. Rose, as has been truly said, is not a private man, but a man in a public situation; and in his public character every man has a right to speculate on his conduct. I do not say Mr. Rose has done those things which this paragraph imputes to him. But if he is innocent, he was very indiscreet in not courting enquiry; and when it was fully in his power, to have manifested his innocence to the whole world, to have confounded his adversaries, and to have shewn that their charges were groundless and malicious.

Gentlemen, when the Attorney-General, whom I am sure I do not mean to include under the observations I have now made, comes into this Court against poor Williams, who is now, and was when the paragraph complained of was published, a prisoner in Newgate. What damages will you give against this miserable prisoner? **WHO BREAKS A BUTTERFLY ON A WHEEL?**

Gentlemen, if you shall be disposed to find a verdict against my client for such a paragraph, when you consider the circumstances that gave rise to it, we must shut ourselves up at home; we must take care what we say as well as what we write.

Mr. Erskine here made a small digression from this subject to the New Forest Bill, which he lamented had been brought into Parliament, considering the

D

consequences

consequences that followed it. That bill was brought in by the Plaintiff; and, said Mr. Erskine, was not the opposition of Lord Thurlow to that Bill one of the causes why he is not now Lord Chancellor of Great Britain, whose great abilities, and unshaken integrity, conferred dignity and respect on the administration of justice. Was not all this notorious? Was it not, in short, all a Treasury job, from beginning to end? And was it not generally called Mr. Rose's Estate Bill, and thrown out of the House of Lords in a very curious sort of way? When the whole history of the proceedings respecting Mr. Rose, in the Court of King's Bench, and in the House of Commons, are fairly considered, and the question then put on the paragraphs in question, every man must answer it in the same way, to wit, that it is no Libel. Mr. Rose sat silent in the House of Commons, when aggravated charges were imputed to him, and resisted the production of that evidence and that enquiry, which beyond all doubt and all contradiction would have cleared up his character and reputation, for the vindication of which this appeal is made to your justice.

Gentlemen, you will judge, whether I am likely to pervert arguments, or trifle with you, the Jury, by using arguments unfit to be used. All I say is, that when Mr. Rose was standing in a public Court of Justice as a Defendant, it was asserted, whether true or false I shall not pretend to say, that Mr. Rose re-

mitted

mitted this man Smith a fine. The trial of that cause was published; an enquiry took place, but it was soon put an end to. These extraordinary proceedings undoubtedly gave birth to the paragraph which has been made the subject of this action.

Mr. Rose has not shewn he is a Secretary of the Treasury; nor has he shewn that the paragraph in question is applicable to him.

Gentlemen, I hope you will not punish a poor creature who is starving, and his family starving for want of bread, and he a prisoner in Newgate now as well as at the time the paragraph was published.

Mr. Rose has brought another action, which is to be tried next, against Mr. Tatterfall, the proprietor of this morning print, for this very paragraph. As he comes here for the vindication of his character, that might be done as effectually by one as by twenty actions. Gentlemen, it is your province to consider all the circumstances of this case, and then I trust you will find a verdict for the Defendant.

MR. ATTORNEY GENERAL. I must set my learned friend right in one fact which he has misrepresented. He has mistakenly stated that the petition of Smith the publican was for the remission of a fine. Your petitioner (reading Smith's petition) begs to say that he is in moderate circumstances, and has seven children; and then he prays that he might be indulged for six months, that is to procure the money.

MR. ERSKINE. I am very much obliged to you for setting right this mistake.

LORD KENYON. I am not obliged to either of you.

LORD KENYON'S
ADDRESS TO THE JURY.

Gentlemen of the Jury,

SINCE the Counsel have chosen to wander so far out of the cause, your good sense will prevent you from following them. This cause has been more wandered from than any I recollect. The party who complains should describe what the injury is on the records of the Court. And it is essential to the administration of justice also that the Defendant, who comes to meet that charge, should state the nature and ground of his defence; so that both sides may be able to bring the point in dispute clearly and distinctly before the Jury, who are the only constitutional tribunal of the country, and who have the decision of this action. The action brought complains of an injury that has been done. The declaration describes the paragraph, and complains that this paragraph contains in it words injurious to the party that brings it before you. And if there is force in language, surely it is a calumny for a man in a public

lic situation, in which he ought to be pure and innocent, and to have no object in view but to discharge his duty to the public, to be so treated in a public print. HE HAS BEEN CONVICTED, &c. I agree with Mr. Erskine that this does not mean that he had been convicted by an impeachment, but of having made the terrors of the Excise Laws an instrument to subvert the Freedom of Election; one of the greatest offences any man in this country can commit. It is the Freedom of Election that puts the House of Commons in the situation in which they are. It is that only which can procure them the confidence of the people.

Gentlemen, setting aside therefore all declamation, and bringing the case home to the feelings and good sense of every honest man, can there be a doubt that this is a calumny? Can there be a doubt about it? There are grievous complaints that all enquiry has been stifled. What was done in the House of Commons I do not know, nor do you judicially know; and if we did it would be of no consequence. Supposing the tools of Government stifled this enquiry in the House of Commons, for God's sake, what can stifle the enquiry here? It was competent to the Defendant to state a justification on the record, and to prove it too if it was true. The Defendant had good advice, and a Counsel who never fails to exert his abilities and zeal for his client. And however things may be wrested in the House of Commons by
the

the hand of Power, HERE they may be had by the even hand of the Law. Let the Defendant lay his case fairly before a Jury of his country, and he may depend upon it they will discharge their duty. It is of no consequence to them whether the action is brought by or against Mr. Rose, or whether it is brought by the Attorney General and Solicitors of the Treasury, or against them, or for or against any other gentlemen. They Jury will remember the oath they have taken, faithfully and conscientiously to discharge their duty, whoever the parties may be.

Gentlemen, it is important to the public, that men in a public situation, while they discharge their duty, should receive the protection of the law. It is for you to say what damages you ought to give, or if you ought to give any damages. If you believe the inuendos do not apply to Mr. Rose, you will give a verdict for the Defendant. If you think they do apply, you will give a verdict for the Plaintiff. The damages are entirely for your consideration.

MR. ERSKINE. My Lord, no evidence has been given to shew that the inuendos apply to Mr. Rose.

LORD KENYON. The Jury have heard the evidence.

The Jury found a verdict for Plaintiff. Damages ONE HUNDRED POUNDS.

ROSE,

ROSE, Esq. v. TATTERSALL.

MR. ERSKINE. My Lord, I am Counsel in this case also for the Defendant, Mr. Tattersall, who is one of the proprietors of the Morning Post, for the very same paragraph. I have so great a respect for the opinion of a Jury, that I am very willing the same verdict should be given against the Defendant as in the last cause.

MR. ATTORNEY GENERAL. I have no objections.

MR. BEARCROFT. I am sure every body will be pleased with it.

Verdict for Plaintiff. Damages ONE HUNDRED POUNDS.

F I N I S . ;

LATELY PUBLISHED,
BY
J. OWEN,
No. 168, PICCADILLY.

1. **THE TRIAL**—The Right Honourable Lady Elizabeth Lambert, (Daughter of the late Earl Cavan) against Richard Tatterfall, Horse-Dealer, and Proprietor of the Morning-Post, for a Libel, in which her Ladyship is charged with Unchastity, in eloping with her Footman.—She obtained a Verdict for **FOUR THOUSAND POUNDS.** TAKEN VERBATIM IN SHORT-HAND.

2. **The Trial.**— Mead, Esq. Barrister at Law, against the Rev. Mr. Daubney, for Slander, by which he lost his Marriage with Miss Barnston, and received a Verdict for **FIVE HUNDRED POUNDS.** Price 1s. 6d.

3. **A Candid Enquiry into the Nature of Government and the Right of Representation.** Price 3s.

4. **Substance of a Speech** intended to have been made on Mr. Wilberforce's Motion for the Abolition of the Slave Trade, on Tuesday, April 3, 1792. But the Unwillingness of the Committee to hear any Thing on the Subject after Mr. Pitt had spoken, prevented the Member from being heard. Second Edition, corrected, with Notes, and an Appendix. Price 1s. 6d.

5. **The Preface, being the Introduction to a Work** shortly to be published in France, should Mr. Fox's Bill upon Libels be eluded, or wholly rejected in England; shewing the People **HOW THINGS ARE.**

BY PLAIN REASON.

Price 2s. 6d.

Ex ACP

1/16/06